

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

STEVEN CARL LARSON,

Plaintiff,

Docket No.: 09-4183

vs.

CIVIL ACTION

MOODY COUNTY, SOUTH DAKOTA, and
MINNEHAHA COUNTY, SOUTH DAKOTA,

AMENDED COMPLAINT

AND DEMAND FOR JURY TRIAL

Defendants.

Plaintiff, by and through his attorney, Michael E. Unke, of Salem, State of South Dakota, for the Complaint and Jury Demand against defendants, Moody County acting through the Moody County Sheriff's Office and Minnehaha County acting through the Minnehaha County Sheriff's Office and Minnehaha County Jail, states, avers and alleges as follows:

BACKGROUND

1. This is a civil action concerning the violation of plaintiff's constitutional and statutory rights by the defendants and the resulting damages brought pursuant to U.S.C. Title 42 § 1983.

VENUE, JURISDICTION and PARTIES

2. This is a civil action brought pursuant to U.S.C. Title 42 § 1983.

MICHAEL E. UNKE

ATTORNEY AT LAW
OFFICE PHONE 605-425-3131
FACSIMILE 605-425-2977
341 NORTH MAIN
P.O. BOX 529
SALEM, SOUTH DAKOTA 57058-0529

3. Venue is appropriate because the defendants are located in Moody and Minnehaha counties in South Dakota. Plaintiff is a resident of Salem, McCook County, South Dakota.

4. This suit is brought under the United States Constitution and the constitution and statutes of the State of South Dakota to recover damages and other relief, including the costs of suit and reasonable attorneys' and expert fees, for the damages plaintiff incurred as a result of the defendants' violation of plaintiff's constitutional and statutory rights pursuant to U.S.C. Title 42 § 1983.

5. Plaintiff, Steven Carl Larson, at all times relevant hereto, was a resident of Moody County, South Dakota until recently when he became a residence of Salem, McCook County, South Dakota.

6. Defendant Moody County is a public corporation organized under South Dakota law with its county seat located in Flandreau, Moody County, South Dakota.

7. Defendant, Minnehaha County is a public corporation organized under South Dakota law with its county seat located in Sioux Falls, Minnehaha County, South Dakota.

**MICHAEL E. UNKE
ATTORNEY AT LAW
OFFICE PHONE 605-425-3131
FACSIMILE 605-425-2977
341 NORTH MAIN
P.O. BOX 529
SALEM, SOUTH DAKOTA 57058-0529**

8. At all times relevant, defendants were organized counties in the state of South Dakota.

9. The jurisdictional amount exceeds \$75,000.00 exclusive of attorney fees, costs, interest, etc.

10. Plaintiff hereby incorporates by reference as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows.

FACTUAL ALLEGATIONS

11. On July 24, 2008, Brion Kimball, Chief of Police for Colman, South Dakota received a telephone call alleging that an individual had been assaulted at her home by plaintiff. Kimball went to the alleged victim's home to investigate. At the residence, Kimball encountered the victim and two other witnesses. Kimball took photographs of the victim's injuries. Kimball also took statements from the witnesses.

12. After speaking with the victim and witnesses, Kimball went to plaintiff's home. Kimball woke the plaintiff who was sleeping on his couch and asked plaintiff about the incident. Kimball explained what the victim was alleging. Plaintiff stated that they were fighting, but that the alleged victim had attacked him. Plaintiff showed Kimball some of his injuries plaintiff had sustained

**MICHAEL E. UNKE
ATTORNEY AT LAW
OFFICE PHONE 605-425-3131
FACSIMILE 605-425-2977
341 NORTH MAIN
P.O. BOX 529
SALEM, SOUTH DAKOTA 57058-0529**

from the attack. Kimball placed plaintiff under arrest for simple assault.

13. Plaintiff asked Kimball to have his injuries photographed. Kimball did not do so, indicating he was not able to at that time. After placing plaintiff under arrest, Kimball transported plaintiff to the Moody County Sheriff's Department. Plaintiff was processed, finger printed, and booked. Plaintiff again asked for pictures to be taken by the Moody County Sheriff's Department. No photographs were taken.

14. After booking, Kimball transported plaintiff to the Minnehaha County Jail, which Moody County had a contractual jailing relationship. At the Minnehaha County Jail, plaintiff immediately renewed his request to document his injuries. Plaintiff specifically asked that photographs be taken. The Minnehaha County Jail staff took no action at that time, and instructed plaintiff to sign up for sick call. Plaintiff did so, but received no response.

15. While in custody, plaintiff made repeated written requests to document his injuries for use as evidence in his defense, as well as requests for the assistance of an attorney, and the opportunity to appear before the court.

16. Plaintiff submitted a total of three written requests, the text of these requests, and the Minnehaha County Jail answers were as follows:

MICHAEL E. UNKE
ATTORNEY AT LAW
OFFICE PHONE 605-425-3131
FACSIMILE 605-425-2977
341 NORTH MAIN
P.O. BOX 529
SALEM, SOUTH DAKOTA 57058-0529

On July 31, 2008, Larson submitted an inmate request form, stating, "Please! I'm on hold from Moody Co. I need picture taken of bite mark/bruise incurred during alleged assault. Need A.S.A.P. before evidence disappears! Thank you."

Answer: "Contact your attorney for any evidentiary question or request you may have."

On August 3, 2008, Larson submitted an inmate request form, stating, "I have also been deprived of my heart, P.T.S.D. meds, as well as for my hietal hernia. I have requested sick call twice to no avail. Please! I have been incarcerated for 11 days now and I still have never been arraigned, therefore I do not have an attorney to contact. I am 100% permanently and totally disabled. I do not have any money for a surety bond. Contact Moody Co. please and ask them for a PR Bond on my behalf. I have no other recourse open to me. Also, I was never given my rights!"

Answer: "You are a Moody County prisoner your bond is \$1,000 cash/surety. The medical staff is aware and signed you up for sick call."

On August 4, 2008, Larson submitted a grievance form, stating, "Moody County needs to be made aware of my inmate request as of 8-4-08. I do not have an attorney because I have been given no arraignment. If you refuse to contact Moody Co. on my behalf, then Minnehaha Co. will also be named in the upcoming law suit on violating my constitutional civil rights!"

17. Plaintiff remained in custody for 18 days before he found a friend who could post bond for him. Plaintiff's injuries had healed. Plaintiff was denied medication for his post traumatic stress disorder, his heart condition, and his hietal hernia for two weeks. Plaintiff suffered extremely from the lack of medical attention. Plaintiff's first opportunity to see a doctor was on the 14th day of his incarceration.

18. That as a result of Plaintiff not receiving timely medication or doctor's care, Plaintiff was hospitalized shortly after his release

MICHAEL E. UNKE

ATTORNEY AT LAW

OFFICE PHONE 605-425-3131

FACSIMILE 605-425-2977

341 NORTH MAIN

P.O. BOX 529

SALEM, SOUTH DAKOTA 57058-0529

and incurred medical expenses of over \$20,000.00.

19. The next available regular Circuit Court session for Moody County, at which plaintiff could have appeared, was on July 29, 2008, only 5 days after the plaintiff was arrested. The defendants did not permit him to do so.

20. Plaintiff was found guilty of simple assault in the court trial before the circuit court Judge Timothy Tucker.

21. Plaintiff appealed his conviction to the South Dakota Supreme Court which reversed and remanded the conviction.

22. Following the remand, the Moody County State's Attorney dismissed the criminal action against Plaintiff with prejudice.

23. Plaintiff's constitutional and statutory rights were violated by the defendants. Plaintiff was incarcerated for 18 days.

24. This action arises under the Amendments to the Constitution of the United States of America. Specifically, the 5th Amendment, being deprived of life, liberty without due process of law, the 6th Amendment, the right to be informed of the nature and cause of the accusation and to have the assistance of counsel for his defense, the 8th Amendment, excessive bail shall not be required, no cruel and unusual punishment inflicted, the 14th Amendment which makes the first 10 amendments

MICHAEL E. UNKE
ATTORNEY AT LAW
OFFICE PHONE 605-425-3131
FACSIMILE 605-425-2977
341 NORTH MAIN
P.O. BOX 529
SALEM, SOUTH DAKOTA 57058-0529

binding on all states, the Act of Congress U.S.C. Title 42 § 1983, the constitution of South Dakota and its statutes, South Dakota Constitution Article 6 Section 7, due process, right to counsel, right to know nature of accusation SDCL 23A-4-1 without unnecessary delay taken before the nearest available magistrate, SDCL 23A-7-4 right to counsel and a preliminary hearing within 15 days.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment against defendants and relief as follows in amounts to be determined at trial:

1. Compensatory damages for violation of plaintiff's constitutional and statutory rights, his illegal detention and injuries suffered from the lack of proper medical care, to include past and future medical expenses in the amount in excess of \$200,000.
2. Attorney's fees, expenses, and costs of this action as allowed by law; and
3. Such further relief as this Court deems necessary, just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all issues.

Dated this 31st day of March, 2010.

Respectfully submitted:



Michael E. Unke
Attorney for the Plaintiff
341 N. Main Street, P.O. Box 529
Salem, South Dakota 57058-0529
Telephone: (605) 425-3131
Facsimile: (605) 425-2977
e-mail: unkelaaw@hotmail.com

MICHAEL E. UNKE

ATTORNEY AT LAW

OFFICE PHONE 605-425-3131

FACSIMILE 605-425-2977

341 NORTH MAIN

P.O. BOX 529

SALEM, SOUTH DAKOTA 57058-0529

CERTIFICATE OF SERVICE

The undersigned, Michael E. Unke, attorney for the plaintiff, hereby certifies that he did service a true and correct copy of Plaintiff's Amended Complaint and Demand for Jury Trial, on defendant by mailing a true copy thereof to defendant's attorney, Gary P. Thimsen, Woods, Fuller, Shultz & Smith, P.O. Box 5027, Sioux Falls, South Dakota 57117, by United States mail, postage prepaid, this 31st day of March, 2010.



Michael E. Unke
Attorney for the Plaintiff
341 N. Main Street, P.O. Box 529
Salem, South Dakota 57058-0529
Telephone: (605) 425-3131
Facsimile: (605) 425-2977
e-mail: unkelaw@hotmail.com

MICHAEL E. UNKE
ATTORNEY AT LAW
OFFICE PHONE 605-425-3131
FACSIMILE 605-425-2977
341 NORTH MAIN
P.O. BOX 529
SALEM, SOUTH DAKOTA 57058-0529